

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DELMAR H. BARCLAY,

Defendant-Petitioner,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

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CASE NO. 5:13-CR-3; 5:15-CV-2374

JUDGE JAMES S. GWIN

**MOTION TO SUPPLEMENT PRO SE
MOTION FOR RELIEF UNDER
28 U.S.C. § 2255**

Now comes the Petitioner, Delmar H. Barclay, through counsel, and respectfully asks permission for counsel to supplement his pro se motion for habeas relief under 28 U.S.C. § 2255 filed on November 19, 2015. Mr. Barclay's motion asserted various claims of ineffective assistance of counsel relating to his designation under the Armed Career Criminal Act and its 15-year mandatory minimum sentence. [Dkt.46, Motion to Vacate, PageID 346]. Mr. Barclay, through counsel, now seeks to supplement his pro se motion with additional argument, in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015).

This Court sentenced Mr. Barclay to 180 months of imprisonment under the Armed Career Criminal Act (ACCA) at 18 U.S.C. § 924(e). [Dkt.51, Sent. Tr., PageID 264]. This Court's designation of Mr. Barclay as an armed career criminal was based on a "large number of crimes of violence or drug trafficking offenses." [R.42, Sent. Tr., PageID 329; PSR at ¶¶ 29, 41, 42, 54, 57, 60, 61]. However, several of the prior offenses either did not qualify at the time of sentencing or no longer qualify in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015). Thus,

Mr. Barclay was improperly designated as an armed career criminal and is not subject to a mandatory minimum of 180 months, requiring de novo resentencing.

A signed agreement from Mr. Barclay to representation by the Office of the Federal Public Defender is attached. In addition, On August 27, 2015, the Office of the Federal Public Defender was appointed to represent all defendants eligible for relief as a result of *Johnson v. United States*, 135 S.Ct. 2551 (2015). See General Order No. 2015-11 (N.D.Ohio Aug. 27, 2015). Counsel thus seeks permission to supplement Mr. Barclay's pro se habeas motion to address whether he was illegally sentenced under the ACCA.

Respectfully submitted,

s/ Wendi L. Overmyer

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Counsel for Delmar H. Barclay

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2015, a copy of the foregoing motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. All other parties will be served by regular U.S. mail.

s/ Wendi L. Overmyer
WENDI L. OVERMYER (0071000)
Office of the Federal Public Defender


Federal Public Defender, Northern District of Ohio
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RE: United States v. Delmar Barclay
Case Nos. 5:13-CR-3; 5:15-CV-2374, Northern District of Ohio

I agree to representation by the Office of the Federal Public Defender in my pending habeas motion for sentencing relief, which I filed pro se on November 19, 2015.

Date: 11-26-15

Signed:



Delmar H. Barclay